United Nations A/HRC/38/NGO/128

General Assembly

Distr.: General
26 June 2018

English only

Human Rights Council
Thirty-eighth session
18 June-6 July 2018
Agenda item 4
Human rights situations that require the Council's attention

Joint written statement* submitted by the International Organization for the Elimination of All Forms of Racial Discrimination (EAFORD), Indian Movement "Tupaj Amaru", International-Lawyers.Org, IUS PRIMI VIRI International Association, Union of Arab Jurists, non-governmental organizations in special consultative status, International Educational Development, Inc., World Peace Council, non-governmental organizations on the roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[28 May 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.18-10428(E)
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Myanmar: Freedom of the Press should be Urgently Restored*

Conditions for the media in Myanmar have improved significantly since the country began its ongoing transition from military dictatorship toward electoral democracy in 2015. However, the government maintains tight control over the media sector through the use of harsh defamation and other laws. In addition to prosecutions, media workers risk threats and physical violence in response to critical or investigative coverage, particularly when it focuses on the government, the military, rebel groups, or the status and treatment of the Rohingya ethnic minority. The media are deeply polarized along political lines, and independent outlets struggle for financial sustainability.

Authorities are increasingly abusing various draconian colonial and military era laws to repress reporting on a widening range of topics. Many journalists and activists had hoped the laws would be amended or scrapped when Nobel Peace Prize Laureate Suu Kyi came to power with a strong electoral mandate to push democratic change through liberal reforms.

Nonetheless, the media landscape is marked by the delay of legislative reforms, and the increasing use of litigious tactics to hamper media freedom. Authorities frequently prosecute online speech under the 2013 Telecommunications Law, which is often invoked against people who purportedly insult or defame the military and the president. Notably, prosecutions under the Telecommunication law had a 100 percent conviction rate in the period spanning 2016-17.1

The Prosecution of Journalists under Ancient Laws

At least two journalists are currently being prosecuted for defamation under Article 500 of the penal code, which dates back to the era of military rule. The two Reuters journalists, Wa Lone and Kyaw Soe Oo, have been held in Myanmar since December. At the time of their arrest the two reporters were looking into the killings in September of ten men from the Rohingya Muslim minority in a village in Rakhine state. The report, published in February by Reuters, while the two journalists were behind bars, suggests the army was responsible.

A court is deliberating over whether they will be charged under the colonial-era Official Secrets Act for possessing secret government papers - an offence that carries a maximum penalty of 14 years in prison. On April 11, a Myanmar judge rejected a defence request to dismiss the case against the two reporters for lack of evidence. The judge said he wanted to hear eight remaining prosecution witnesses out of the 25 listed. The proceedings against Wa Lone and Kyaw Soe Oo are a transparent attempt to intimidate the media and to prevent coverage of the unfolding tragedy of the Rohingya people in Myanmar's Rakhine state.

A police officer, Capt. Moe Yan Naing, in Myanmar who testified that police were to "entrap and arrest" the two reporters is now himself facing up to two years in prison under disciplinary charges. The police officer has claimed that police officers were threatened by a superior with imprisonment if they failed to capture Wa Lone. He stated that he was instructed to frame the two journalists by providing them with documents related to security operations in Rakhine state. Authorities tightly restrict reporting on military activity in Rakhine State, where the armed forces have been accused of severe mistreatment of the Rohingya population.

1 Since 2016, Myanmar Courts Have Convicted 100% of People Charged Under Telecom Law 66 (d), 29 January 2018, available at: https://globalvoices.org/2018/01/29/since-2016-myanmar-courts-have-convicted-100-of-people-charged-under-telecom-law-66-d/ (last accessed 01/05/2018)

Fear, Threats and Arrests of Local and Foreign Journalists

Press freedom is a cornerstone of democracy, and the government's growing crackdown on media is undermining the country's democratic transition. Myanmar's media, both local and foreign, are under heavy assault as security measures used to suppress the press under military rule are reactivated under Suu Kyi's quasi-democratic government.

The arrest of three local journalists--Thein Zaw with *The Irrawaddy*, and Aye Nai and Pyae Phong Aung at the *Democratic Voice of Burma* (DVB)- on June 26 in the country's northeastern Shan State and their subsequent detention raised even more serious concerns on the freedom of the press situation in Myanmar. All three were held on charges under the 1908 Unlawful Association Act, a provision used against journalists during military rule to discourage reporting on the nation's various ethnic armed conflicts.

The Myanmar military dropped the charges and the three reporters were finally released on September 1, but an intimidating precedent was set. Most –if not all- journalists feel discouraged to remain in the country and continue reporting on the ethnic cleansing taking place against the Rohingya. Since Suu Kyi came into power at least 29 journalists have been arrested, although most of them have been released. For instance, in November, two foreign journalists were charged under another obscure law, the Aircraft Act of 1934, for flying a drone over the parliament building. The prosecution of the two Reuters reporters has only made the situation worse.

The government's repressive focus now is on censoring coverage of western Rakhine State, from where over 680,000 Rohingya Muslim refugees have fled military violence into neighbouring Bangladesh since August 25 last year. The government has strictly barred reporters from the state's northern reaches - apart from a handful of tightly stage-managed press tours - in the name of security. Most of the reporting on the allegations of rape, summary executions and other abuses has been sourced through refugee and victim interviews in camps in Bangladesh.

Journalists in Myanmar can incite anger simply by using the word Rohingya, which many in the country consider a sham ethnic name for a group of imposters from Bangladesh. The situation is deteriorating for both local and foreign journalists. All of them receive threats for their lives, when they commit themselves to investigating the situation in the Rakhine State. Foreign reporters in particular face difficulties in obtaining and renewing media visas. Furthermore, more than 20 foreign staff resigned or were fired from the *Myanmar Times* after a journalist there was sacked for reporting on rape allegations by Rohingya women in late 2016.

Conclusion and Recommendations

While the Burmese authorities have restricted –or absolutely prohibited- access to the UN and foreign missions in Myanmar, journalists are frequently the only source of information regarding the humanitarian tragedy currently occurring in Myanmar. The prosecution and threats against journalists hampers the unveiling of the truth regarding the Rohingya crisis and the transition of Myanmar to democracy.

Freedom of the press shall not be restored subsequently to the ending of the ethnic cleansing against the Rohingyas or the successful establishment of democratic principles in Myanmar. There is an imperative need that freedom of the press is restored immediately and journalists be provided the opportunity to investigate the crimes taking place. The international community has the right to be properly informed on the situation in order to be able to take appropriate and just measures.

To this end, the undersigning organizations suggest that:

-The Myanmar government immediately drops charges against all detained journalists, including the two Reuters journalists;

-The Human Rights Council adopts a resolution condemning the grave violations of freedom of the press in Myanmar;

-The Human Rights Council considers sanctions to be taken against Myanmar, after assessing the situation holistically;

-The international community presses for the release of all the journalists held in captivity in Myanmar, including the two Reuters journalists;

-The Myanmar government provides local and foreign journalists with media visas and grants them access to cover the incidents taking place in the Rakhine State at their own responsibility and discontinue using security reasons as a ground for not granting access to the region;

-Myanmar reviews its legal framework regarding freedom of speech and freedom of expression and adopts legal instruments, which do not reflect a military perspective;

-Myanmar ceases enforcing laws, which date back to the colonial or military rule era;

-Myanmar ceases deterring journalists and representatives of international organs from reporting the living conditions of the Rohingya and the crimes committed against them.

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*Geneva International Centre for Justice (GICJ), The Arab Lawyers Association-UK, Human Rights Defenders (HRD), The Brussells Tribunal, The Iraqi Commission for Human Rights (ICHR), Association of Humanitarian Lawyers (AHL), Association of Human Rights Defenders in Iraq (AHRD), General Federation of Iraqi Women (GFIW), Organisation for Justice & Democracy in Iraq (OJDI), Women Will Association (WWA), The Iraqi Centre for Human Rights, The International League of Iraqi Academics (ILIA), International Anti-Occupation Network (IAON), Kuala Lumpur Foundation to Criminalise War, NGOs without consultative status, also share the views expressed in this statement.